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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Appellee, v. PHILLIP RICHARD SIMMONS, Appellant.	2 CA-CR 2009-0044 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20073659

Honorable Howard Fell, Judge Pro Tempore

AFFIRMED

Terry Goddard, Arizona Attorney General
By Kent E. Cattani and Joseph L. Parkhurst — Tucson
Attorneys for Appellee

Peter B. Keller — Tucson
Attorney for Appellant

E S P I N O S A, Presiding Judge.

¶1 After a jury trial, Phillip Simmons was convicted of possession of marijuana for sale, possession of a narcotic drug for sale, production of marijuana, and

possession of drug paraphernalia. He was sentenced to concurrent terms of imprisonment, the longest of which is six years. In the sole issue on appeal, Simmons argues the trial court reversibly erred by denying his motion to suppress evidence obtained after what he contends was an illegal search. We affirm.

Factual and Procedural History

¶2 In reviewing a motion to suppress evidence, we consider only the evidence presented to the trial court at the suppression hearing, construing all facts in the light most favorable to upholding the court's ruling. *State v. Zinsmeyer*, 222 Ariz. 612, ¶ 4, 218 P.3d 1069, 1074 (App. 2009). One afternoon in September 2007, three Tucson police officers responded to a call from one of Simmons's neighbors who reported that Simmons had accused her son of theft. After speaking to her, the officers walked to Simmons's home and found him standing in his fenced front yard. When they attempted to speak to him, he "[t]urned around and ran into [his trailer]." Seconds later, he came back outside naked and walked towards them.

¶3 As Simmons approached, the officers entered the yard, handcuffed him, and walked him back into his trailer through the open door to remove him from public view. Just inside the door, they covered Simmons with a towel and eventually convinced him to get dressed. While getting the towel, one officer saw a marijuana pipe and a "white powdery substance" that Simmons later admitted was cocaine. The officers then informed Simmons he was under arrest and took him outside to await a mental health evaluation before they transported him to jail.

¶4 Prior to trial, Simmons moved to suppress all evidence discovered as a result of the officers' entering his home. Following a hearing, the trial court denied his motion.

Discussion

¶5 We review a trial court's ruling on a motion to suppress evidence for an abuse of discretion if it involves a discretionary issue, but we review purely legal and constitutional issues de novo. *State v. Booker*, 212 Ariz. 502, ¶ 10, 135 P.3d 57, 59 (App. 2006). And we will affirm the trial court's ruling if it was legally correct for any reason. *State v. Childress*, 222 Ariz. 334, ¶ 9, 214 P.3d 422, 426 (App. 2009). As Simmons correctly points out, both the United States and Arizona Constitutions protect against unreasonable searches and seizures, U.S. Const. amends. IV and XIV; Ariz. Const. art. II, § 8, and the state has the burden of overcoming the presumption that any warrantless entry into a home is unreasonable, *State v. Ault*, 150 Ariz. 459, 464, 724 P.2d 545, 550 (1986). Without citation to any further authority, Simmons asserts the officers violated his constitutional rights by handcuffing him and walking him into his home because he was neither posing a threat to the officers nor offending any neighbor with his nudity. We construe this argument as a contention that his nudity was not an exigent circumstance excusing the officers from obtaining a warrant to enter his home.[1] The state

[1]Although Simmons's undeveloped argument could be considered waived, *see State v. Cons*, 208 Ariz. 409, ¶ 18, 94 P.3d 609, 616 (App. 2004), in our discretion, we elect to consider it because he raises a constitutional question. *See State v. Rodriguez*, 205 Ariz. 392, ¶¶ 27-33, 71 P.3d 919, 927-28 (App. 2003).

cites a host of cases from other jurisdictions, which, it contends, create a "clothing exception" that is "a variant or subcategory of the 'exigent circumstances' exception to the warrant requirement." But we need not determine whether a discrete clothing exception exists because we find the officers' entry was justifiable under the well-established community-caretaking and emergency-aid exceptions to the warrant requirement.[2]

¶6 Arizona recognizes that law enforcement officers are privileged to enter premises without a warrant in order to render emergency aid or fulfill their community-caretaker functions as long as such entry is "'suitably circumscribed to serve the exigency which prompted it.'" *In re Tiffany O.*, 217 Ariz. 370, ¶¶ 21-22, 174 P.3d 282, 288 (App. 2007), *quoting People v. Ray*, 981 P.2d 928, 937 (Cal. 1999). Because officers are not generally searching for evidence when performing their caretaking functions, *see Ray*, 981 P.2d at 937, they may do what is "'reasonably necessary'" to determine whether a person needs assistance and to provide such assistance, *Tiffany O.*, 217 Ariz. 370, ¶ 21, 174 P.3d at 288, *quoting Ray*, 981 P.2d at 937.

¶7 As the trial court found, there was evidence Simmons was "acting bizarrely and saying strange things" after the officers approached him. And the responding officers testified that, when Simmons removed his clothing, their primary objectives were to determine why he did so and also to spare the public from his indecent exposure. The

[2]The record indicates the trial court based its ruling on the law supporting the state's "clothing exception" argument, although it appears the state also argued that the officers' actions were justified by their community-caretaker function.

officers demonstrated their concern about Simmons's mental state by requesting a behavioral health evaluation before transporting him to jail.

¶8 We conclude the entry into Simmons's home was reasonable, given the officers' community-caretaker and emergency-aid duties to respond to the exigencies of the situation. It was reasonably necessary for the officers to temporarily detain Simmons after he reappeared without clothing to ascertain whether he was mentally ill and in need of assistance. And, because he was naked, it was similarly reasonable to escort him into his home for clothing and to shield neighbors and passersby from his nudity. *See* A.R.S. § 13-1402(A) (indecent exposure committed when defendant exposes genitals in presence of another with reckless unconcern for whether other person would be offended or alarmed); *see also Norgord v. State ex rel. Berning*, 201 Ariz. 228, ¶ 17, 33 P.3d 1166, 1170 (App. 2001) (indecent-exposure statute intended to preserve community morals and protect individuals from offense and alarm).

¶9 Moreover, the officers' entry was appropriately limited to the exigencies presented. At the suppression hearing, the officers testified that, upon walking Simmons into his mobile home, they had seated him on a bed just inside the doorway. Then, because he was reluctant to put on clothes, one officer obtained a towel from a nearby bathroom and covered him. While doing so, the officer saw the drug evidence, which Simmons does not dispute was in plain view in the bathroom and on the dresser. We conclude the trial court could properly find the officers' actions did not exceed those

necessary to respond to the situation and that no violation of Simmons's constitutional rights occurred.[3]

Disposition

¶10 Because the evidence at the suppression hearing established that the officers' entry into Simmons's home was a reasonable response to the exigencies confronting them, the trial court did not err in denying his motion to suppress and we affirm his convictions and sentences.

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Presiding Judge

CONCURRING:

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge

[3]Although Simmons correctly notes that our state constitution may afford greater protection of a home than does the federal constitution, *see, e.g.*, *Ault*, 150 Ariz. at 466, 724 P.2d at 552, he did not meaningfully raise this argument below and has not advanced any argument on appeal explaining how Arizona's constitution should be interpreted differently in this situation. Accordingly, we decline to separately analyze our state constitution. *See State v. Dean*, 206 Ariz. 158, n.1, 76 P.3d 429, 432 n.1 (2003) (claim waived when defendant presented no separate argument based on state constitution); *State v. Calabrese*, 157 Ariz. 189, 191, 755 P.2d 1177, 1179 (App. 1988) (state constitutional objections waived if not argued in trial court).